



# Focus on Sharing proprietary information with Ecology

from Ecology's Solid Waste and Financial Assistance Program

State agencies often need the assistance of outside organizations that have unique information vital to the development of well-informed policies and programs. At times, however, sharing such information can place a business's proprietary information into the public domain and make it available to competing businesses.

The state Legislature recognizes the need to ensure that a private organization can share essential information with the Department of Ecology without putting itself at risk. The following guidelines are designed to help outside entities share proprietary information with Ecology under protections provided by state law.

Confidentiality may apply to documents or information provided to the state Department of Ecology by an outside entity under the following statute:

**RCW 43.21A.160**

**Request for certification of records as confidential -- Procedure.**

*Whenever any records or other information furnished under the authority of this chapter to the director, the department, or any division of the department, relate to the processes of production unique to the owner or operator thereof, or may affect adversely the competitive position of such owner or operator if released to the public or to a competitor, the owner or operator of such processes or production may so certify, and request that such information or records be made available only for the confidential use of the director, the department, or the appropriate division of the department. The director shall give consideration to the request, and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of this chapter, may grant the same.*

However, confidentiality under this law is limited. Since such information is essential to helping Ecology act in the public's best interest, Ecology will endeavor to protect sensitive information from disclosure to avoid placing companies at a competitive disadvantage. With that goal in mind, Ecology recommends the following steps:

- **If you have any concerns about the confidentiality of a document or other information, ask first.** Under RCW 43.21A.160, in order to have information treated as confidential, a person must certify that documents or other information submitted to Ecology relate to a unique proprietary process or could harm the person's competitive position if released to the public or a competitor, and must request confidentiality.

Ecology may make the documents or other information confidential upon determining that doing so would not be detrimental to the public interest and is otherwise in accord with Ecology's policies and purposes.

Any document submitted to a state agency generally becomes a public record, subject to disclosure under the State Public Records Act. It is therefore important that if you are considering submitting information to Ecology, you call us and tell us, in broad terms, what kind of document or information you are considering sharing before submitting any records, so that we may work with you to determine whether the information in question qualifies for confidentiality.

It is important to discuss the type of information you are considering submitting before you divulge any propriety information. Following this discussion, it will generally be necessary to communicate the specifics of what will be held confidential in writing.

***For inquiries regarding PBDE (polybrominated diphenyl ether) flame retardants or persistent bioaccumulative toxins (PBTs), contact Cathy Carruthers at 360-407-6564.  
For questions about other programs, contact the Ecology employee who has requested the information.***

- **If you need to submit a document to us, redact any information you wouldn't want someone else to have access to.** There are times when the scope of information is too complex or large to share verbally. By blanking out information that identifies your company or products or processes or ingredients, you can make sure a document gives us the information we need without divulging anything you don't want to share publicly.
- **When in doubt, ask.** Again, the best time to make sure you're not putting competitive information at risk of public disclosure is prior to providing a document to Ecology. Call us and ask about how this process works BEFORE you share any information and we can provide guidelines on how to protect proprietary information under RCW 43.21A.160.